

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of P.M.M., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

RHONDA FAYE SCRUGGS,

Respondent,

and

ANTHONY BRODERICK MCCLENDON,

Respondent-Appellant.

UNPUBLISHED

January 31, 2003

No. 241838

Wayne Circuit Court

Family Division

LC No. 94-318178

Before: Jansen, P.J., and Hoekstra and Gage, JJ.

PER CURIAM.

Respondent McClendon appeals as of right from the trial court's order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii) and (g). We reverse.

Respondent first contends that the trial court erred in assuming jurisdiction because petitioner did not present any evidence to show that he was an unfit custodian or that his home was unfit for the child. We disagree. The trial court found that the child's mother, who had custody of the child, was an unfit custodian because her parental rights to the child's siblings had been terminated. The mother's treatment of the child's siblings was probative of how she was likely to treat the minor child, *In re Jackson*, 199 Mich App 22, 26; 501 NW2d 182 (1993); *In re Andeson*, 155 Mich App 615, 622; 400 NW2d 330 (1986), and the doctrine of anticipatory neglect or abuse provided an appropriate basis for assuming jurisdiction. *In re Powers*, 208 Mich App 582, 589; 528 NW2d 799 (1995); *In re Dittrick Infant*, 80 Mich App 219, 222; 263 NW2d 37 (1977). The trial court's jurisdiction is "tied to the children," and petitioner is not required to "sustain the burden of proof at an adjudication with respect to every parent of the children involved in a protective proceeding before the family court can act in its dispositional capacity." *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2002).

Respondent next argues that the trial court clearly erred in terminating his parental rights. We agree.

To warrant termination, the trial court must find that at least one of the statutory grounds in MCL 712A.19b(3) has been proved by clear and convincing evidence. *In re IEM*, 233 Mich App 438, 450; 592 NW2d 751 (1999). We review the trial court's findings for clear error. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Vasquez*, 199 Mich App 44, 51-52; 501 NW2d 231 (1993).

The evidence did not clearly and convincingly establish that respondent had abandoned the child for a period of ninety-one days without seeking custody during that time. MCL 712A.19b(3)(a)(ii). Indeed, as of the date the petition was filed, the statutory period had not elapsed and respondent had expressed an interest in planning for the child. Further, as of the date of the hearing, although the statutory period had elapsed, respondent had participated in court proceedings to protect his parental rights within that period. Therefore, the trial court clearly erred in terminating respondent's parental rights under § 19b(3)(a)(ii).

The evidence also did not clearly and convincingly establish that respondent failed to provide proper care or custody for the child and was not reasonably likely to be able to do so within a reasonable time given the child's age. MCL 712A.19b(3)(g). Respondent never had an opportunity to provide care and custody because the child was placed in foster care directly from the hospital after his birth. In addition, the evidence on which the trial court relied did not clearly and convincingly demonstrate that respondent could not reasonably be expected to provide proper care and custody within a reasonable time.

The court referred to respondent as having been convicted of possession of a controlled substance analogue, MCL 333.7403(2)(b)(ii), but the evidence did not clearly establish that respondent was ever convicted of that offense. The court also relied on respondent's substantial child support arrearage arising from a 1988 divorce judgment. However, respondent's failure to pay support for his other child(ren), standing alone, did not establish that he was without funds or income sufficient to support himself and the minor child, only that whatever his financial situation, he was not paying court-ordered support. Further, even assuming that respondent's child support arrearage was evidence of past long-term indigence, there was no evidence that he would not be able to obtain or maintain a sufficient income within a reasonable time. Therefore, the trial court clearly erred in terminating respondent's parental rights under § 19b(3)(g).

Because reversal is warranted on the basis of insufficient evidence to establish the statutory grounds for termination, it is unnecessary to address respondent's remaining claims of error.

Reversed.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Hilda R. Gage